

## APPEAL NO. 93185

On January 11, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The issue at the hearing was whether the appellant (claimant herein) has disability as a result of an accident at work on (date of injury). The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). The hearing officer determined that the claimant does not have and has not had disability based on her compensable injury of (date of injury). The claimant contends that the hearing officer's finding and conclusion of no disability are against the great weight and preponderance of the evidence, and requests that the hearing officer's decision be reversed and a decision rendered in favor of the claimant. The respondent (carrier herein) responds that the claimant's appeal may be untimely and that the hearing officer's decision is supported by the evidence. The carrier requests that the decision be affirmed.

## DECISION

Finding that the claimant's request for review was not timely filed, the hearing officer's decision has become final by operation of law.

Article 8308-6.41(a) provides that a party that desires to appeal the decision of the hearing officer shall file a written appeal with the Appeals Panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division of hearings. The hearing officer's decision was mailed to the parties on February 11, 1993. The claimant does not state when she received the decision. Accordingly, under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h) (Rule 102.5(h)) the claimant is deemed to have received the decision on Tuesday, February 16, 1993, which was five days after the date mailed. A request for review is presumed to be timely filed if it is mailed on or before the 15th day after the date of receipt of the hearing officer's decision, and it is received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the decision. Rule 143.3(c). The 15th day after the deemed date of receipt was Wednesday, March 3, 1993. The claimant's request for review is dated and postmarked March 5, 1993, and was received by the Commission on March 10, 1993. Consequently, since the request for review was not mailed to the Commission on or before the 15th day after the date of receipt of the hearing officer's decision, the appeal was not timely filed and the hearing officer's decision has become final under the provisions of Article 8308-6.34(h).

The hearing officer's decision has become final pursuant to Article 8308-6.34(h), because the claimant did not file a timely appeal.

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Robert W. Potts

Appeals Judge

CONCUR:

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Stark O. Sanders, Jr.  
Chief Appeals Judge

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Philip F. O'Neill  
Appeals Judge